

REMARKS

Claims 1-3 and 5-21 are currently pending in the application.

All claims stand rejected under 35 U.S.C. § 112 as allegedly failing to comply with the written description requirement. The Examiner argues that the Applicant failed to disclose the negative limitation of no brim/bill projecting from the left or right sides in the originally filed specification. Applicant respectfully disagrees with the Examiner's rejection.

Applicant has disclosed a baseball-style cap. It is respectfully submitted that those skilled in the art would recognize that a conventional baseball-style cap has a crown with a single, forwardly projecting rim/bill. As stated in U.S. Patent No. 6,243,877, to Heyward Jr., cited by the Examiner, "[b]aseball caps are hats having a single bill on one side of the cap" (column 1, lines 19 and 20). The Examiner also references a "conventional baseball cap" on page 2 of the Action in the second full paragraph. It is respectfully submitted that one skilled in the art would recognize a conventional baseball-style cap with a brim/bill projecting forwardly from the crown as not including a brim/bill projecting from either the left or right side of the crown. For redundancy, Applicant has amended the specification on page 8 to recite a "single" brim/bill 32 that projects forwardly from the crown 12. Claim 1 has further been amended to characterize the baseball-style cap as "conventional".

Accordingly, support for the negative limitation is found in the original application and withdrawal of the rejection under 35 U.S.C. § 112 is thus requested.

Claims 1-3, 7, 9, 11, 13 and 14 stand rejected under 35 U.S.C. § 103 as obvious over U.S. Patent No. 6,243,877, to Heyward Jr. (Heyward), in view of U.S. Patent No. 6,175,963 (Loeffelholz). Claim 10 stands rejected under 35 U.S.C. § 103 as obvious over

Heyward in view of U.S. Patent No. 6,408,443 (Park). Claim 15 stands rejected under 35 U.S.C. § 103 as obvious over Heyward in view of U.S. Patent No. 5,556,696 (Pinkus). Claims 19-21 stand rejected under 35 U.S.C. § 103 as obvious over Heyward in view of U.S. Patent No. 5,584,076 (Armstrong). Claims 5, 6, 8 and 16-18 stand rejected under 35 U.S.C. § 103 as obvious over Heyward in view of U.S. Patent No. 6,185,746 (Scott). Claim 12 stands rejected under 35 U.S.C. § 103 as obvious over Heyward in view of U.S. Patent No. 4,416,633 (Gulack).

Reconsideration of the rejection of claims 1-3 and 5-21 is requested.

It is not clear whether the Examiner has given consideration to the subject matter of the “information” that is claimed on the headwear piece. The Examiner’s statement in the second sentence in paragraph 2 on page 2 of the Action with respect to this issue is unclear.

Applicant notes that the contents of the “information” must not be ignored and must be considered in determining patentability. The Federal Circuit In re Gulack 217 USPQ 401 (Fed. Cir. 1983) stated that “[d]ifferences between an invention and the prior art cited against it cannot be ignored merely because those differences reside in the content of the printed matter” (at page 403).

The Court stated further that “[u]nder Section 103, the Board cannot dissect a claim, excise the printed matter from it, and declare the remaining portion of the mutilated claim to be unpatentable. The claim must be read as a whole” (at page 403).

Claim 1 specifically recites first information that identifies an event, with second information identifying a plurality of participants in the event.

Heyward does not teach or suggest such a combination of first and second information. Heyward discloses only a specific type of coordinated information that differs from that claimed by applicant. In column 1, lines 39-42 and column 2, lines 11-15, Heyward describes that a city having 3-5 major league teams may put in the identity, one each on the "placards". For the five bills, sports logos could appear with one advertising logo. Heyward also states in column 2, lines 14-19 that each placard may have a different message, logo, or design with a design, logo, message or other indicia appearing on one or more of the bills. As Heyward further describes, the hat is designed to be worn by a user to highlight the team of interest by wearing the placard associated with that team in the forward position.

Heyward's entire teaching is directed away from the structure of a conventional baseball-style cap and the ornamentation is peculiar not to the conventional baseball-style cap, but to the configuration shown by Heyward, with 3 to 5 projecting bills.

Applicant's claimed structure is specifically directed to a conventional baseball-style cap that can be worn, as by professional baseball players or other individuals, to produce a unique visual effect resulting from the strategic placement of information thereon.

Before the significance of the placement of the information is explained, it should be noted that the recitation of the crown as having "octants" is not intended to define discernable, viewable divisions on the headwear piece. Instead, these are merely reference divisions to allow relative placement of the information thereon to be defined.

The significance of the claimed structure can be best understood by reference to an example. First information may be provided on at least one of the front/left side and front/right side octants that relates to an event, that may be a competition involving two or

more teams or individuals. As one example, the event may be a playoff game or an all star game. The second information relates to participants in that event. By reason of its location, the first information, pertaining to the event, is viewable from the front of the headwear piece, whereas the second information is not clearly viewable from the same perspective. Those viewing the headwear piece from the front thereof will be apprised of the identification of the event. As the viewing perspective changes, the information relating to the participants can be clearly focused upon. From the front, the information is strategically located so as to highlight the event, while at the same time, the headwear bears information pertaining to the participants that makes the headwear piece multi-functional and valuable, as for the users and souvenir hunters. The headwear piece thus could conceivably be used by participants in the event, while later, in the identical form, affording a valuable prize to a souvenir hunter for that event.

In one more specific example, the event may be a major league baseball all star game, with the first information identifying the event. The second information may identify the separate leagues participating or the team participants in the leagues. The headwear piece may be worn by the players during the game, with the exact same headwear piece offered to the public for souvenirs. As the players are viewed from a front perspective, the identification of the all star game is highlighted.

Heyward does not teach or suggest any corresponding information with the strategic placement recited. The Examiner states on page 4 of the Action that "[w]hile Heyward does not specifically state that the team logos are related to the sporting event listed on the bill, the cap is capable of serving that function" (page 4, lines 3 and 4). It is well known that an obviousness rejection requires that the prior art teach or suggest the claimed

subject matter or that one skilled in the art with cited prior art in hand would be motivated to arrive at the claimed subject matter.

Heyward nowhere teaches use of any corresponding information and in fact teaches away from the same by providing a completely different headwear piece construction and putting information thereon in a manner inconsistent with what is claimed. The fact that Heyward's cap is "capable of serving that function" does not make it obvious to modify Heyward's cap to arrive at the claimed structure, particularly when Heyward's express teachings lead one away therefrom.

Accordingly, the only teaching, suggestion, or motivation to modify Heyward must come from Loeffelholz. Loeffelholz teaches only generically that a "badge, emblem, or display element" may be selectively applied at different locations around the crown (column 5, lines 37 and 38). Applicant will admit that the placement of information at different locations on a crown is known, as manufacturers consistently place such information at different locations around crowns. However, Loeffelholz adds nothing more to this basic teaching other than by describing a specific manner of magnetically affixing emblems to the crown.

Thus, in the absence of using Applicant's claims as a template, there is no suggestion, and one would not be taught or motivated, by the combined teachings of Heyward and Loeffelholz, to produce a headwear piece with information as specifically recited in Applicant's claim 1.

Accordingly, claim 1 is believed allowable.

Claims 2, 3, 7, 9, 11, 13 and 14 depend cognately from claim 1 and recite further significant structural detail to further distinguish over the combination of Heyward and Loeffelholz.

As one example, claim 13 recites a plurality of logos in at least one octant on the crown. Nowhere in either reference is there a suggestion of multiple logos in a single octant. Claim 13 further characterizes the logos as skewed from a normal orientation. This arrangement is shown in Figure 8.

Claim 14 characterizes the logos as randomly oriented in at least one octant. This arrangement is also shown in Figure 8 and is clearly not taught or suggested by Heyward or Loeffelholz, taken alone or in combination.

The Examiner relies on Park in combination with Heyward in rejecting claim 10, which recites an opening in the crown through which a wearer's head projects. Applicant admits that a top opening in a crown through which a wearer's head projects is not novel in and of itself, but is unobvious in combination with the other elements of claim 1, from which claim 10 depends.

With respect to claim 15, which characterizes the information as being applied through embroidery, again the Applicant admits that the application of information on a headwear piece through embroidery is known, but not on a headwear piece having a construction as in claim 1, from which claim 15 depends.

Claims 19-21 are directed to an adjustable strap, and in the case of claims 20 and 21, information thereon. Claims 21 specifically characterizes the information as identifying the event, as does the first information recited in claim 1.

While Armstrong discloses information on an adjustable strap, the information is not described as being correlated with any corresponding first and second information, as with an event as claimed.

The Examiner relies on Scott in combination with Heyward in rejecting claims 5, 6, 8 and 16-18.

Claim 5 recites third information on the brim/bill related to the event. It is not certain how Scott, in combination with Heyward, teaches or suggests this structure.

Claim 6 depends from claim 1 and characterizes the second information as comprising an identification of each of the participants in the event.

Scott is directed to an "athletic schedule shirt for recording athletic events". It is not clear how Scott's teachings, in conjunction with Heyward, would teach or suggest the claimed structure, or motivate one who is skilled in the art, to arrive at the same. At best, one would take the schedule from Scott and apply it somehow to Heyward, which does not result in the claimed structure.

The Examiner argues that "the Applicant states to [sic] criticality or unexpected results in the information being placed on the hat as claimed" (page 6, lines 17 and 18).

Contrary to this statement, Applicant has explained the significance of the specific information and its strategic placement. That is, the hat becomes usable at an event, such as a baseball all star game as both a functional item for the players and potentially a souvenir for the public, in the same form. Therefore, it is not appropriate to treat or ignore the information and treat the limitations related thereto as a "design choice" (page 6, line 19 of the Action).

Claim 8 more particularly characterizes the nature of the information that is not obvious from the combination of Heyward and Scott.

Claims 16 and 17 recite a specific arrangement of logos, with claim 17 reciting a substantially uniform distribution on each of the plurality of octants.

Nowhere in Heyward or Scott is there any teaching or suggestion of this structure.

In rejecting claim 12, the Examiner relies on Gulack in combination with Heyward. Gulack's disclosure is related to a plurality of numbers, not logos. Applicant respectfully submits that one skilled in the art would not obviously combine Gulack's structure with Heyward's. That is, Gulack is focused on a mathematical device, not a device wherein coordinated information is applied on a headwear piece.

Reconsideration of the rejection of claims 1-3 and 5-21 is requested.

Respectfully submitted,

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